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SOCIETY FOR PROMOTING SCIENTIFIC INQUIRIES INTO SOCIAL QUESTIONS.

REPORT

ON

THE PATENT LAWS.

BY

JAMES A. LAWSON, ESQ., LL. D.

BARRISTER-AT-LAW,

FORMERLY ARCHBISHOP WHATELY'S PROFESSOR OF POLITICAL ECONOMY IN THE UNIVERSITY OF DUBLIN.

DUBLIN:

HODGES AND SMITH, 104, GRAFTON STREET

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REPORT.

Dublin, 4th February, 1851.

GENTLEMEN,

I have, at your request, inquired into the state of the Law of Patents in this country, and I now beg to lay before you the result of that inquiry. My attention was particularly directed by you, "to the expense and delay of obtaining a patent; and to the legislative measures which would be necessary to lessen that expense and delay, and at the same time to afford greater security to inventors."

I have examined into the British law upon the subject, as compared with the law of other countries; and the suggestions which I have ventured to make, are the result of a comparison of the relative merit of those systems, guided by the opinions pronounced upon them by those who have had practical experience of their working.

I propose to consider then,

1st. What is the expense and what is the delay of obtaining a patent, and what occasions such expense and delay?

2nd. What are the rights conferred upon a patentee by the grant of a patent under British law?

3rd. What are the defects in the present system of patent laws?

4th. What are the best changes in the law which can be suggested?

Before entering upon these inquiries, I shall make a few preliminary observations on the nature of patents, and the principles on which they are based; as these principles ought to guide us in legislating on the subject.

A patent is a species of monopoly, sanctioned by the law for wise purposes and within certain limits; and is, with respect to inventions, what copyright is to books. When any man has made a useful invention in the arts, or has put his thoughts into writing, it is perfectly at his option whether he will ever disclose the invention, or publish the book; there is no law to compel him so to do; he may die without imparting the discovery, or he may put his manuscript into the fire. Now, if there were no law of patent

and no law of copyright, the effect of his publication would be, that what had been his own exclusive property before, would become public property; and any man could use it as he pleased. We know that men, even when they stumble upon a discovery by accident, are not very fond of presenting it to the public, if they can make any profit by concealing it; and still more certain is it, that in most cases a man will not devote himself to making discoveries, for the mere sake of giving them to the public, without any personal advantage to himself. The principle, then, on which the law of patents ought to rest, is two-fold.

First. To encourage men to make useful discoveries and inventions, by insuring to their authors the right of property for such a period, as will enable them to derive that profit from their ingenuity which they are justly entitled to.

Secondly, to secure the communication of the knowledge of inventions to the public; so that there may be no obstacle to their use in suggesting further discoveries, or to their exercise as soon as they become public property, when the period of monopoly is over.

If the law does not confer these rights, with cheapness, certainty, and expedition, in the case of inventions as in the case of books, it fails to carry out the principles on which its existence is based. Bearing these principles in mind, let us see how the law actually stands.

CHAPTER I.

ON THE COST AND DELAY OF OBTAINING A PATENT.

SECTION 1.—*Cost and delay of unopposed patents.*

The cost of obtaining letters patent for England, Ireland, and Scotland, may be stated to be nearly as follows:—

For England and Wales..	£110.
Scotland	82.
Ireland	134.
	£326.

This estimate is taken from the printed instructions published by various patent agents, for the information of those wishing to apply for patents; and I shall afterwards give a detail of the items of which these sums are made up. In this estimate the expense of preparing specifications is not included; these must be prepared by skilful persons, with great technical accuracy, and the expense of preparing them is stated in those same instructions to vary from £15 upwards. The specification must be enrolled in the Court of Chancery, and there is a stamp duty of £5; and £1 for every 1080 words after the first 1080 words. Taking these specifications, of which three are required, at £25 each, it makes the

total expense of an unopposed patent, £401 for the United Kingdom; and it has been stated to me by a patentee, that the expense, including all the incidental charges, may be generally estimated at £450. Such is the cost of a patent for the United Kingdom.

The delay in obtaining a patent is

In England	from 6 weeks to 2 months.
In Scotland	3 to 4 weeks.
In Ireland	5 to 6 months.

The result of the above statements, so far as Ireland is concerned, is, that the expense and delay of obtaining a patent in Ireland are greater than in any other country in the world, and the consequence which might be naturally anticipated ensues; there is no country, where patents are known, in which so few are taken out, in proportion to its population and general intelligence. Patents are granted with us for a period of fourteen years; and in order to compare the scale of charges in the United Kingdom, I will mention the cost of obtaining patents in a few other countries. In the United States of America, the fee payable by an American citizen for a patent is 30 dollars, or £6 15s. In France, the duration of patents or brevets of invention, is five, ten, or fifteen years: the charge is £20 for five years, £40 for ten years, £60 for fifteen years. The tax is payable by annuities of £4 each. In Austria the expense of a patent for fifteen years is about £75; and this is the nearest approach to the British scale of charge.

SECTION 2.—*The expense and delay are occasioned by the course of proceeding which must be adopted in order to obtain a patent.*

The expense and delay are caused by the number of the stages through which an application for a patent must pass, and the fees exacted at each step, as will be apparent when I describe the very complicated process which must now be gone through in order to obtain a patent. The cost and delay may be entirely removed by simplifying the course of proceeding.

A petition to the Queen is first to be prepared, setting forth the title of the invention, stating that the petitioner is the inventor, and praying for a grant of letters patent. This is accompanied by a declaration made before a Master in Chancery, verifying the same matter. The petition and declaration are then left at the Home Office, and the Home Secretary refers the matter of the petition to the Attorney or Solicitor-general. The petition is then taken to the Attorney-general's chambers, and left there for a report. If no person has entered a caveat, a proceeding which I shall presently notice, the Attorney-general reports that the letters patent ought to be granted to the petitioner at his own risk. This report of the Attorney-general is then taken to the Home Office, where a warrant is made, which is a copy of the petition, and sent to the Queen for signature. When signed by her Majesty, and counter-

signed by the Home Secretary, it is taken to the Patent Bill Office. The grant of the patent may be opposed at this stage also; but if not opposed, the draft of the Bill, and docquet of the Bill are made out at the Patent Bill Office, and two copies of the Bill are engrossed, one for the Signet Office and one for the Privy Seal Office. The Bill is then taken to the Attorney-general, and signed by him. It is then taken to the Home Office again, and sent to the Queen for signature. It then is taken to the Signet Office, to prepare the Signet Bill; then a Privy Seal Bill is prepared for the Lord Chancellor; then the patent is engrossed, and taken to the Hanaper Office, and if no opposition is given at this stage, the patent is sealed, and the grant complete.

In the case of a Scotch patent, the matter is referred to the Lord Advocate to report on; but the Bill is passed by sign manual, a shorter and less expensive process, which accounts for the lesser cost and delay in these cases.

In the case of an Irish patent, the petition is transmitted to the Lord Lieutenant, who refers it to the Attorney-general for Ireland. The Attorney-general reports upon it, and it is sent back to the Castle; it is then sent to London, and the warrant is prepared and goes through the Signet Office in London, and it is again sent to Ireland to have the Great Seal of Ireland affixed to it. This is a very tedious and expensive process, and all the witnesses, who were examined before the Committee of the House of Commons on Patents of invention, in 1829, and in 1848 on the Signet and Privy Seal Offices, complain much of the delay in getting Irish patents.*

Thus it appears that more than twenty different stages or processes must be gone through; the petitioner must incur the expense of employing an agent, and that agent must call from day to day at the offices to inquire if his papers are ready, and

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* Mr. Abbott, in his evidence before the Committee on Patents of Invention in 1829, states:—"How to account for it I do not know, but you can seldom get an Irish Patent in less than five or six months. I have often, and every body who has had anything to do with it, has felt the great inconvenience they are put to in getting a patent for Ireland. The patentee is in danger of having his rights destroyed, in as much as he must specify in England, and any one may see that specification here on paying the office fees for search; and by sending over to Ireland the whole subject matter of it, there is no patent right to prevent it being used there, and being used is completely destructive of the patent."

A witness examined before the Committee on the Signet and Privy Seal offices, says:—"We transmit a petition to the Lord Lieutenant through an agent, and he sends it to the Attorney-General who reports upon it and then the agency ceases in Ireland; and we never again get hold of the documents, as they are transmitted through the offices, and the consequence is that we have far more enormous delays in Ireland than in England and Scotland."

Again, Mr. Carpmael, *ibid*:—"What is the reason that you have ten times the number of patents in England that you have in Ireland?—Because it is not worth people's while to go to the expense."

take and transmit them to the next official, and so through all the tedious and unnecessary process. Great delays arise from various occasional causes,* and expedition must sometimes be procured by payment of further fees.†

It is plain from this statement, that the cost and delay are caused by an adherence to obsolete and useless forms, which have been handed down from a very remote period, and are still preserved, though they are entirely unsuited to the exigencies of the case and the wants of society, and are felt to be a very oppressive and unnecessary burthen. No good or plausible reason can be suggested for adhering any longer to these forms; they are useless and vexatious; they are not, like some legal forms, harmless fictions, but substantial grievances. The delay is inevitable where a matter must pass through so many stages, and where the petitioner is obliged to wait the leisure of officials, and to transmit the application from one office to another. Even if it were deemed expedient to continue the present *cost* of obtaining a patent, it would be right to abolish the present procedure, and permit a person *at once* to obtain his patent at one office upon payment of the tax imposed; for the delay, at least, cannot be said to be of any benefit.

At present, the fees paid are applied to remunerate persons for doing what is useless, and whose services ought either to be discontinued, or, if required, rewarded by a fixed salary. All the benefits now conferred by the tedious process of obtaining letters patent would be as effectually secured by a simple certificate of registration, which could be obtained without any delay, and at a small expense, as it is obtained under the Designs Act. I do not say that the machinery of the registration under the Designs Acts should be applied to inventions, but merely observe that the issue of such a certificate would be as efficacious and would confer the same benefits as the grant of letters patent now gives.

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* "The completion of the warrant may be delayed by holidays, the absence of Her Majesty, and many other causes."—*Hindmarch on Patents.*

† The Statute, 27 Henry VIII., c. 11, which requires that every patent should be brought to the clerks of the Signet and Privy Seal, was passed *for the purpose of creating fees.*

Mr. Spence, who was examined before the Committee of 1849, is asked, "Are the proceedings at the Signet office and Privy Seal office any thing more than formal with regard to new inventions?"—"Nothing more than formal, but they are dilatory. Great complaint has been made, and with reason, at the confinement to one seal day in the week. The rule is to deposit the bill on Thursday, at one o'clock, in order to be in time for the seal on Friday. If it passes over one o'clock on Thursday, it is delayed for a week. The Privy Seal, however, may be obtained in a day, on payment of five guineas as an expedition fee."

SECTION 3.—*Detail of Fees payable on Patents.*

The particulars of the fees and expenses, so far as I have been able to collect them, are the following:—

ENGLAND.

	£ s. d.	£ s. d.
Preparing Title of Invention, Petition, and Declaration		1 5 6
Secretary of State's Reference	2 2 6	
Warrant	7 13 6	
Bill	7 13 6	
		17 9 6
Attorney or Solicitor-General's Report	4 4 0	
Bill	15 16 0	
		20 0 0
Signet Office Fees		4 7 0
Privy Seal Fees		4 7 0
Great Seal Office Fees	5 17 8	
Stamps	30 2 0	
Boxes	0 9 6	
Gratuity	2 2 0	
Hanaper	7 13 6	
Deputy	0 10 6	
Recepi	1 11 6	
Sealers	0 10 6	
Office-keeper	0 5 0	
		49 2 2
Passing Patent		10 10 0
Letters, &c.		1 1 0
		£108 2 2

SCOTLAND.

	£ s. d.	£ s. d.
Preparing Title of Invention, Petition, and Declaration		1 5 6
Secretary of State's Reference	2 2 6	
Warrant	15 7 0	
Stamp	1 10 0	
		18 19 6
Lord Advocate's Report		4 4 0
Director	15 0 0	
Clerk	7 10 0	
Translator	1 1 0	
Servant	0 3 6	
Livery	0 3 7½	
Extra	0 2 6	
		25 0 7½
Great Seal, Lord Keeper	6 13 4	
Deputy	2 10 0	
Usher	2 4 5½	
Appendee	2 2 0	
Deputy	0 1 0	
Wax	0 7 6	
Extra	0 2 6	
Agency in Scotland	4 4 0	
		18 4 9½
Passing Patent		10 10 0
Letters, &c.		1 11 6
		£79 15 11

IRELAND.

				£	s.	d.
Preparing Title of Invention, Declaration, and Petition				1	5	6
Secretary of State's Reference -- -- --	2	2	6			
Warrant -- -- --	7	13	6			
Stamp -- -- --	1	10	0			
				11	6	0
Attorney or Solicitor-General's Report -- --				31	10	0
Signet Office -- -- -- -- --				3	3	0
Seal Office -- -- -- -- --				2	14	6
Lord Lieutenant's Fiat -- -- -- --				5	5	0
Attorney General's Clerk, for Fiat -- --				11	0	3
Clerk to Hanaper -- -- -- --				8	9	2
Stamp -- -- -- -- -- --				30	0	0
Inrolling -- -- -- -- -- --				1	1	8
Further Fees -- -- -- -- -- --				21	2	6
Passing Patent -- -- -- -- --				10	10	0
Letters -- -- -- -- -- --				1	11	6
				£138	19	1

The above Table of Fees is taken from "Carpmael on Patent Laws."

A table of Irish fees is also given in Thom's Directory for 1848, which agrees with the statements already made as to the expense of Irish Patents. They are there stated to amount to £116 17s. 7d., and to this must be added the fees payable in England for the part of the business transacted there in preparing the Warrant and Signet, as well as agency fees £10 10s.; and it will make up about the sum of £134 already stated.

Section 4.—*Cost and delay of opposed patents.*

Such are the cost and delay of an unopposed patent—we shall now see what the cost and delay will be in case it is opposed. Any person who pleases may now enter a caveat in respect of the granting of a patent for any particular department, which entitles him to notice of every application for a patent respecting that department. For instance if a person enters a caveat against patents for improvements in the steam engine, he gets notice through the office of every application for such a patent. On receiving notice of that application, he has seven days to enter opposition. The parties then have a hearing before the Attorney or Solicitor General; each party is heard separately, and states his invention; and if there be no similarity between them, he grants the patent of course. If he thinks there is any similarity between them, it is frequently suggested that the parties should join in the patent, or otherwise effect a compromise; but to induce the Attorney or Solicitor-general absolutely to refuse the patent, a very strong case must be made out, that the invention is not original, or has been already the subject of a patent, or has been published, and is notoriously old. If he refuses, there is no appeal from that decision, and the applicant is remediless. The official fee for the meeting is £3 10s. to which must be added the costs of the agent of the party, and counsel if employed; and of course some delay is

caused thereby, as the Attorney and Solicitor-general are much pressed with business.* There is, as before mentioned, a second stage at which opposition may be made; and if an opponent neglect opposing in the first instance, he is obliged to deposit £30 to meet the cost of the opposition, and the petitioner's expenses. This opposition is not of very frequent occurrence. Before the Lord Chancellor an opposition may also take place; but this is also of rare occurrence. Thus the expense and delay are greatly increased by opposition, but this is of course under the present system unavoidable.

SEC. 5.—*The expense and delay are not caused by any search for previous inventions.*

IT might naturally be expected, that where a great number of inventions have been made and patented, a principal cause of delay would be the obvious necessity of inquiry whether the same invention had been previously published or patented. No such inquiry, however, is made on the part of the authorities from whom the patent is obtained; and inventors themselves are unable effectually to make the inquiry, because there are no facilities given to assist them in such a search.

It is scarcely possible for an inventor to know what inventions have been already patented. The specifications formerly were enrolled in three different places in London, which inconvenience has been remedied by a recent statute; still they are, for all practical purposes, very difficult of access. They are written in an engrossing hand, not classified or indexed, and the labour and expense of searching present an insurmountable obstacle to inventors making themselves acquainted with the recorded inventions of others. One witness examined before the committee stated that he paid £2 8s. fees, for searching for one day in the Enrolment Office. We all know by experience how frequently it occurs that different minds have arrived at the same results, without any communication with each other, or knowledge of what has been said, done, or thought by others; and, therefore, a person arrives at an important mechanical result which he never heard of before, and which he arrived at by his own unaided ingenuity, and is therefore virtually or morally the inventor of it. Believing himself to be so, and believing that his invention will be profitable to himself, and useful to the community, he applies for and obtains a patent. He has no adequate means of ascertaining whether the invention has been ever made the subject of patent. He knows it is not in use, and is satisfied with this; and after he

* "It frequently happens that the Attorney or Solicitor-General is prevented by his other engagements from attending at his chambers at the time appointed, and in such cases the hearing will be postponed from time to time by the clerk until the matters of the petition and opposition can be heard; and an opposing party must attend the further appointment without any fresh summons."—*Hindmarch*, p. 514.

has incurred the expense of taking out his patent, he finds when he seeks to enforce it, that the invention has been substantially patented before, and that he must therefore be defeated, and his patent held void; for such is the law; a thing once patented becomes, at the end of the fourteen years, public property, and cannot be made the subject of patent again. Thus persons every day pay their money for obtaining patents which are entirely worthless. In order to guard against these evils, several changes ought to be made, which we shall suggest when we come to discuss the reforms proposed.

Sec. 6.—*Enrolment of Specifications.*

After the patent is sealed, in order to complete the title of the patentee, the only thing remaining to be done is the enrolment of the specification, for which a period is allowed after the sealing of the patent. If the patent is applied for only for England, the usual period is two months; but if for the United Kingdom, six months are allowed; and in some cases, so long a period as fifteen months has been allowed. We shall see how this works when we come to consider the frauds arising out of the present system of patents. If, at the lapse of the appointed time, the specification is not enrolled, the patent becomes void. The specification is a document which must be prepared with great skill and care, as the whole title of the patentee is avoided by any defect in it, and the most subtle questions of law and fact arise upon the construction of the specification. It should consist of a minute and detailed description of the invention, illustrated with drawings if necessary, and so prepared that any competent workman would from it be enabled to carry out the invention. I have already stated the expense attendant upon the preparation of the specification, and I shall presently consider the policy of allowing any interval to elapse between the grant of the patent and the description of the thing patented.

CHAPTER II.

RIGHTS OF A PATENTEE UNDER BRITISH LAW.

We have next to inquire what are the rights conferred upon a patentee by the grant of a patent according to our law.

The result of the expensive, complicated and tedious proceedings which we have detailed is this—The petitioner has made a claim, alleging himself to be the proprietor of a certain invention, and has obtained a grant at his own risk and peril.* There has been

* "Although patents of invention are not demandable as of right, yet they are in practice rarely refused, the reason being, as stated in the Attorney-general's report, that the grant is entirely at the risk of the petitioner." *Hindmarch on Patents*, p. 377.

as yet no judicial or other determination, either that he is an inventor; or if an inventor, that he has taken the proper means to secure to himself the exclusive use of that invention. The only effect of the patent is to give him a right to litigate those questions. Whether it is expedient that the claimant should be put in a better position is a question to be considered; but as a matter of fact, the effect of all that has taken place is to establish that he has made a claim to property, which claim he may substantiate before the ordinary tribunals of the country. If after a patent has been granted, the alleged right of the patentee is infringed, what remedy does the law provide him? If he has sufficient evidence to prove the fact of the infringement, he may at once bring an action on the case against the party who has infringed his right. If, however, he has not sufficient evidence, he must resort to the costly process of filing a Bill in Chancery for discovery and an injunction, which will probably result in a trial at law. Now what defence may a party make who is sued by a patentee? He can not only deny the infringement of that exclusive right which the patent professed to grant, but he can go behind the patent itself, and impeach its validity on technical grounds.* He may go into evidence to show that it is not a new invention, but has been used before,† or that an old patent was in existence. The patent may also be impeached on various defects in the title and the specification;‡ thus, if the title does not correspond with the specification; or if there be any error in the specification, even of a trifling nature.§ Again, if anything old be introduced, and claimed as original in the specification, it will vitiate the whole, although all the rest be new,

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* Mr. Taylor says:—"The *great evil* is having to defend your patent in a Court of Law."

Mr. Farey says:—"If patent rights were made more secure at law, and by less expensive proceedings, it would not suit the interest of patentees to enter into combinations, but on the contrary to promote the most extensive and open use of their inventions by licenses at a moderate tax."

† A case is mentioned in the Evidence before the Committee of 1829, of a patent obtained by Mr. Daniel, for a particular mode of giving a lustre to cloth. On the trial one witness was produced, who swore that he had done the same thing before. It was not pretended that the process was in use, or had been published; yet on this evidence the patentee was defeated. In another case, *Carpenter* v. *Smith*, 9 Mee and Wel. 300, proof that an individual had used a lock, similar to that patented, on a gate near the road, avoided the patent.

‡ A very intelligent and experienced witness, Mr. Farey, before the Committee of 1829, states:—"It is one of the most metaphysical problems that I know, to prepare a title to a patent, not to be so clear as to call the attention of rivals, and not so obscure as to incur the danger that a Court of Justice may rule that it is an imperfect title."

§ Thus, in one case the word 'pressing' was put in by mistake, instead of 'dressing' and the expenses were obliged to be incurred over again. A witness who was himself a patentee, states:—"I have not practised the invention, because I cannot do it at a profit; because if I were to begin working it, all my neighbours would do the same, in defiance of my patent. My specification is not worth a farthing, and I do not believe it is possible to make a specification upon this loom that will pass in a court of law."

so that a partial defect vitiates the whole.* Watts's patent for steam engines was upheld though in fact the specification was not such as would enable a person to construct a steam engine from it. A patentee, therefore, has now no security when he has obtained his patent, that he will be allowed to enjoy the property; and notwithstanding the expense he has incurred, his rights may be entirely defeated. As a specimen of the many defences which can be set up against a patentee, and the litigation consequent thereon, I may mention a case which I have taken at random from the Law Reports of last year. The name of the case is Beard against Egerton.† The declaration, which is the complaint, is of great length, setting out the patent, the enrolment of the specification, and the various breaches complained of. The patent was obtained by a person named Berry, for the Daguerreotype, and by him assigned to Beard. The defendant pleaded fifteen pleas:—

1. That he was not guilty of the infringement.
2. That the Queen did not grant the patent.
3. That the patent was obtained from the Queen by fraud.
4. That Berry was not the inventor.
5. That Daguerre was the inventor, and that Berry had only introduced it into this country, and that he held the patent in trust for Daguerre, who was an alien.
6. That the invention had been published and used in France.
7. Similar to the 6th plea.
8. That it was not a new manufacture.
9. That it was not a new invention as to the public use.
10. That the title was bad.
11. That the title was inconsistent and too large.
12. That the invention was not duly specified.
13. That Berry did not assign to the plaintiff.
14. That the defendant used the invention by the leave and license of the plaintiff.
15. That the invention was of no use.

There were legal objections to some of these pleas, which were argued before the court. Then a trial took place, at which the infringement was admitted and these technical defences relied on, and then the case was argued before the court again.

Now I think a more monstrous abuse could scarcely be conceived, than is evidenced in allowing a party to raise these unjust and inconsistent defences. This case appears to have been more than three years depending, during all which time parties might infringe as they pleased; for the patentee could not obtain an injunction until he had established his right at law.

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* Thus, in Brunton's patent for anchors, windlasses, and chain cables, the patent was held wholly void, because the construction of the anchors was not new. The Judges express their reluctance at being obliged to come to that conclusion. The case is reported in 4th Barn. and Ald. 541.

† 8 Common Bench Reports, p. 165.

I think, therefore, it sufficiently appears that, notwithstanding the expense incurred, there is no adequate security afforded to an inventor in the enjoyment of his property; and if it were as difficult to obtain a copy-right for a book, and to defend it when obtained, as it is to obtain and defend a patent, authors would be as rare as inventors.

CHAPTER III.

DEFECTS IN THE PATENT LAWS.

Some of the defects in the law we have noticed already, viz., the expense and delay, the want of facilities for searching for previous inventions, and the want of security to the patentee. I shall now advert to some others.

SEC. 1.—*Frauds arising from caveats, and the delay in enrolling specifications.*

The present law is neither clear nor certain as to the criteria by which the priority of invention is ascertained. The right of a patentee dates from the sealing of his patent, and it may be so contrived that the person who is not the first inventor, may have his patent sealed first. This is accomplished by a system which has led to many abuses and frauds, that of caveats, and the delay allowed in enrolling specifications. Any person may, at the cost of £1 1s., enter a caveat against the granting of letters patent for any particular invention, or in any trade or manufacture. For instance, a caveat may be entered for improvements in the steam engine, or improvements in cotton-spinning, candle-making, or such like. The effect of this caveat is, that the person entering it gets notice of every application for a patent which has reference to the subject for which the caveat is entered, and has an opportunity of opposing the application. If he enters opposition, the Attorney-general appoints a day to hear the parties. On that day they are heard separately and apart, each stating his own invention in order that the Attorney-general may decide whether any similarity exists between them. If he considers them alike, the patent will be refused until the parties have entered into some amicable arrangement. The effect is that the person who entered the caveat, from seeing the title of the patent applied for, endeavours to guess at what the invention is, and if he succeeds in doing so, or persuades the Attorney-general that the inventions are similar, it may result in his either becoming a joint proprietor of the patent, or receiving a large sum of money to get rid of his claim; and the witnesses examined before the committee of 1829 state, that caveats are entered, stating the invention in very general terms, with the sole object of enabling the parties who have

entered them, to oppose persons applying for patents, and thus to extort money. Again, it works in this way; a person applying for a patent, is not bound in the first instance to specify, that is, to give any details of his invention; he may obtain a period of six months to specify, by applying for a patent for the United Kingdom,* and he obtains a patent without having really made any invention, but trusting that he may find out something before the six months have elapsed. The following advice is given in the publication of Messrs. Newton and Son, already adverted to:—"The most politic course for an inventor to pursue, in the event of his having some supposed improvements, which he may ultimately wish to protect by patent in the United Kingdom, but of the success of which he is not perfectly certain, is to enter a caveat, and take the preliminary steps to secure a patent for England by making the application in the regular manner, as if it were his intention to obtain the patent in due course." Now, the practical effect of permitting this course is as follows. A person makes an important invention, say in the machinery for spinning cotton, and has his invention perfected, ready for use, and desires to take out a patent. He goes to the patent office, and finds that there have been five or six patents recently granted for improvements in the same machinery, the specifications of which have not yet been enrolled, and for anything he knows they may be identical with his own. If he now applies for a patent and enrolls his specification forthwith, as he is prepared to do, it is obvious that his patent may be avoided; for any prior patentee may see and examine his specification, and take hints from it, and embody it substantially in his own specification, which is yet to be enrolled, and upon the enrolment of that within the time limited, he, though a pirate, and not an inventor, gains priority over the real inventor, because the patent was first sealed. Caveats are entered and patents applied for on this speculation, by persons also who have no claim whatever to be considered inventors; especially in trades where improvements are continually taking place.† Thus, a man sees a *desideratum*, an object which if accomplished would be of great value, but has not the ingenuity to devise the means, or has only some very obscure notion of a mode in which perhaps it might be done. He applies for a patent for an improvement in this respect;

* "The reason for allowing a longer time for specifying, when the party intends to apply for Scotch and Irish patents, is, that these patents require a much longer time for their preparation than English patents; and if the English patent were to be enrolled before the sealing of the Scotch and Irish patents, these patents would be void, on the ground of the invention not being new, a knowledge of the invention having been previously given to the public by the enrolment of the specification."—*Hindmarch on Patents.*

† These evils are to some extent remedied by an order issued by the English Attorney-General, and which came into operation on the 15th January, requiring an outline of the invention to be deposited; but this cannot entirely do away with the evils, which seem to be inherent in the present system of granting patents.

and, if unopposed, obtains it without difficulty. Afterwards, when other minds really supply the want, and devise the means of practically working it, he steps in, and reaps the fruit of their ingenuity.*

Sec. 2.—*Strictness required in Specifications.*

The rule which now prevails, that if a party claims anything in his specification which is not his invention, the patent is vitiated, works injustice. The patent should be permitted to stand good for the part really new, if the whole was bona fide an invention.† It is also a defect in the present law, that if you make an improvement in your patented invention, you must go through the expense of obtaining a new patent in order to have the benefit of that improvement.

Sec. 3.—*Tribunals and Modes of Procedure for trying Patent Questions.*

With respect to the modes of procedure for trying patent cases, and the tribunals before which they are tried, it must be admitted that they are open to great objection, and much fault is found with them, and justly. On the other hand, the creation of special tribunals is felt to be dangerous, and, save so far as the experience of other nations as to their working may serve as a guide, experimental. I shall notice what I conceive to be the most marked and glaring defects in the present system. And first, I think I am justified in saying that the selection of the Attorney or Solicitor General, as a judge in patent cases, is one of the very worst that could be conceived. In the unopposed cases, as has been already stated, no inquiry is made into the novelty of the invention or otherwise; it passes as a matter of course. In opposed cases, the inquiry is by no means a satisfactory one. One of the witnesses examined before the committee of 1829 (Mr. Few) says, "The practice before the Attorney General is little better than a farce at present." Mr. Farey says:—"Upon any person proving to the Attorney General that an invention had been publicly practised before, he would refuse the patent; but opposition is of no effect unless it be a notoriously old invention." Since that time, more strictness has been introduced, and the practice before the Attorney-General has been much improved by recent regulations; but still it is a very defective tribunal. Mr. Webster, in his evidence before

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* "Persons have frequently been known to obtain patents containing titles couched in the most general and indefinite terms, for the purpose of afterwards including any novelty of which they may obtain a knowledge during the time allowed for the enrolment, and which would be covered by the title."—*Hindmarch on Patents.*

† "More patents have been lost by the insufficiency of the specification than any other cause."—*Hindmarch on Patents.*

the Committee of 1849, says that it is a bad tribunal, and great delays and postponements take place. It is evident that such delays must take place when we consider for a moment the occupations which press upon an English Attorney-general.—Professional, public, and parliamentary business, all to be discharged, render it perfectly impossible that the Attorney-general could satisfactorily hear and adjudicate upon the patent cases; and, as we can reckon on a considerable increase in the number of patents applied for, when the cost of obtaining them is reduced, it would then become an impossibility for the Attorney-general to dispose of the cases; they would be enough to occupy the whole time and undivided attention of one person at least. Another circumstance which renders it impossible that the Attorney-general can decide them satisfactorily is this, that if he refuses the application, there is no appeal from his decision; besides, a considerable amount of scientific knowledge must be possessed in order to judge rightly; and this, one Attorney-general may have, and his successor may have none. We may, therefore, I think, conclude, that it will be entirely impossible to effect any adequate reform in the patent laws, without abolishing this function of the Attorney and Solicitor-general, and substituting something in its stead; inasmuch as it would be impossible for them to discharge the duty when the number of applications is considerably increased.

Sec. 4.—*Want of a simple Mode of repealing a Patent.*

The next defect I would advert to is this, that there is no adequate machinery for repealing or cancelling a patent which has been improvidently issued, or fraudulently obtained. The mode of procedure is, by what is called a "Scire Facias." This is a very difficult, complicated, and expensive proceeding; it must be taken in the name of the Queen, the pleadings in it are very voluminous, and it is consequently a proceeding not very commonly resorted to. The party bringing the action must give security in £1000 for costs.*

Section 5.—*Law as to infringement of Patents.*

The law as to what amounts to an infringement of a patent is clear enough. No mere colourable variation from the process of the patentee, or adoption of mechanical equivalents, will prevent the act of the party from amounting to an infringement.† A patentee whose right is infringed must bring an action at law,

* The power to determine a patent is also vested in the Queen and Privy Council, on the ground that it was improvidently issued, or was fraudulently obtained; but there is no modern instance of a proceeding of this kind.

† Per Tindal, C. J. Walton *v.* Potter (1 Webst. Pat. Cases, 586): "When a person has obtained a patent for a new invention, or a discovery he has made by his own ingenuity, it is not in the power of any other person, simply by varying in form or in immaterial circumstances the nature or subject

called an action on the case for the infringement of the patent—for he will not obtain an injunction without getting a verdict at law. A person would suppose that the only questions to be tried in such a case would be, the fact of infringement, and the measure of damages; but, as we have already seen, that is not so, and the infringer brings all the ingenuity which he can command into play to defeat the patentee. He may, as we have seen, plead not guilty, that is, that he did not infringe—and plead the invalidity of the patent. Thus difficult questions are raised, and left for the decision of the court and jury; and the consequence is, that this action is no longer a proceeding to recover damages for the infringement of an admitted right, but an indirect mode of determining whether any such right exists; and the damages given are only nominal. Now it is a very expensive thing to have all those various matters spread out upon the record, as they must be, and it is a very expensive and uncertain matter to have them decided upon by a jury, who in many cases do not understand the scientific question they are to decide upon. The consequence of this is, that each party, calculating that the jury will decide in a great measure by the preponderance of scientific evidence on the one side or the other, vies with his adversary in the number of the witnesses to depose according to their skill to the various scientific matters at issue, and such a course entails enormous expense; besides, the ordinary class of jurymen can scarcely be expected to arrive at the true view of a case which must be collected from models, from drawings, from the parol explanations of witnesses and the addresses of counsel. When we consider all these things we cannot wonder at the complaints made of the expense and hazard of trying patent rights.

CHAPTER IV.

CHANGES SUGGESTED IN THE PATENT LAWS.

In the last place, it remains that I should consider what are the changes in the law best calculated to remove these admitted evils, and to secure effectually the right of property in inventions.

I shall at once state the changes in the law, which after a careful consideration of what has been suggested upon the subject, appear to me the most desirable; and I shall then give my reasons in detail for advocating each change. I may observe, that in recommending these reforms I have been in no degree

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matter of that discovery, to obtain either a patent for it himself, or to use it without the leave of the patentee."

Per Alderson, B. in Morgan *v.* Seaward (1 Webst. 171): "The question should be whether the defendant's machine was only colourably different, that is, whether it differed merely in the substitution of mechanical equivalents for the contrivances which are resorted to by the patentee."

influenced by any considerations as to the probability of their adoption. It would be easy to suggest others which would conflict less with existing interests or existing abuses, and which would, as a temporary measure, satisfy the demands of those who call for improvement. My aim has been to suggest a code of laws, sound in their principle and adapted to the growing wants of the country.

SUGGESTIONS.

1. That one patent office should be established for the United Kingdom, and that all patents granted should be granted for the United Kingdom.

It seems to me both useless and inconvenient, that there should be separate machinery for the granting of patents in London, Dublin, and Edinburgh; its present effect is to increase the cost and delay without conferring any advantage; and it also increases the facilities for committing frauds, which exist under the present system of patent laws, some of which have been detailed. If the present reference to the Attorney and Solicitor-general be abolished, and a Commissioner of patents appointed, as I suggest, it would be obviously absurd to have three patent offices in the United Kingdom; it would greatly increase expense, and tend to prevent uniformity of decision, by the establishment of three tribunals instead of one. As far as Irish inventors are concerned, I do not think they would have any just ground of complaint, at being under the necessity of getting their patents from the Patent Office in London. They are now in fact obliged to do so; for I believe there is no instance of any patent being taken out in Ireland only; and of the number of patents enrolled in Ireland, a very small proportion indeed are taken out by Irishmen. Of sixty patents enrolled in Ireland during the last year, only three were obtained by persons resident in Ireland, and I find the proportion in other years is not greater. I think, therefore, that all persons must concur in the propriety of establishing one Patent Office for the United Kingdom.

2. That the Patent Office should be presided over by a Commissioner of Patents to be appointed by the Crown,—that he should be a person of scientific knowledge—that he should not engage in any other occupation—that the salary should be such as to secure the services of a competent person; and that examiners and clerks should be appointed under him, their number to depend on the amount of business to be transacted.

With respect to the appointment of a Commissioner of Patents, I think it is plain that the Attorney and Solicitor-general cannot

any longer have the jurisdiction of adjudicating upon patents entrusted to them, consistently with the ensuring to the public despatch, and at the same time care, in the issuing of patents. It is clear, then, that some officer must be appointed for that purpose. If the plan proposed by the Society of Arts were adopted, namely, that a patent should consist in a mere registration, without any inquiry into the propriety of its grant, and treating it as a mere record of claim, then any ordinary clerk could discharge the duties of the office; but I am persuaded that it is unjust towards inventors and injurious to the public, that a grant of a monopoly should take place without any inquiry into the merits of the application. It would be an illusory proceeding, as it is now in very many cases, where a man pays for a grant of a patent for an old invention, from which grant, being nugatory, he can derive no benefit, and which only entails useless litigation on the community; and if a facility of obtaining supposed privileges at a cheap rate, were given without any inquiry, I cannot but think that the consequences would be injurious to inventors and the public. The experience of the United States of America shows that the establishment of such a tribunal works well. The qualifications of such a Commissioner manifestly should be of a high order.

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3. That any person claiming to be an inventor, and desiring a patent, should send in a petition to the Commissioner in the following form:—

To the Commissioner of Patents.

The petition of of
Sheweth, That he has invented a new and improved mode of [*title of the invention*] which he believes has not been before known or publicly used; he therefore prays that a patent may be granted to him therefor.

That this petition be accompanied with a specification, drawings, and, where practicable, a model or specimen, and a declaration by the petitioner, to be made before any justice of the peace, that he believes he is the first inventor.

The specification to be in the following form:—

I, *A. B.*, having petitioned for a patent for do hereby declare that the following is a true, full, and exact description thereof. [*Then describe the invention.*]

This is the mode of application used in the United States of America. The furnishing of a model and specimen is also required in America; and I have been told by those who have seen it, that the patent office there, with its museum attached, is an institution which would reflect credit on any country.*

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* The Commissioner of Patents for the United States in his Report for 1849, says—"The superiority of our system consists also in the rejection of

4. That a sum of £10 should be lodged in the Patent Office with the petition, as the fee payable on the grant of a patent.

The sum required in America is £6 15s. from a citizen of the United States; £112 10s. from a subject of Great Britain; £67 10s. from any other foreigner. These distinctions are impolitic as well as unjust, and will no doubt soon be abolished.* The fee I have suggested, £10, will no doubt appear to many persons too low, but I think that on principle the fee required should not be more than will be sufficient to pay the expenses of the office, of printing the specifications, and preparing a proper catalogue of inventions; any surplus that may remain after these expenses should be applied to the encouragement of inventors. The argument used against cheap patents is, that if they were too cheap, every trifle would be patented, and you could not, to use the words of one of the witnesses, bend a bar of iron without the risk of an action. Now it must be admitted that to require the payment of £300 before a patent is granted is a very clumsy mode of testing the merits of an invention; though it does test the means of the applicant. It is entirely unsatisfactory as a test, and is just as likely to prevent the communication of important inventions as of trifling ones, if the inventor be poor; while if he be rich, the payment will not prevent the patent from being sought for, though the invention be worthless, if the inventor be ignorant or vain. With respect to the evils to be apprehended from cheap patents, I believe that if due inquiry were made into the novelty of the invention, no such evil consequences would ensue. If the invention prove worthless, then no one is injured by being debarred from its exercise; if it is new and useful, the inventor is entitled to be rewarded for his ingenuity: and the multiplication of patents would introduce more generally the system of giving licences to use them at a moderate rate.

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intricate legal forms, so that any inventor of ordinary capacity may make out and pass through the office his own papers, without the intervention of attorney or agent; also in the requirement of models and their free examination—in the information and advice verbally and by circulars gratuitously given—access to the office library—and in the practice of examining into the novelty and value of devices and discoveries for which patents are asked. Not a week elapses without ingenious men being prevented from spending their money on patents by what they see and learn here. Every applicant in person is advised to look through the models, examine the specifications, and the published reports of the office before making application; it is, perhaps, superfluous to add that many who follow the advice see they are anticipated, and make no application at all. Surprised to find themselves on beaten tracks, instead of ranging, as they supposed, through untrodden fields, they have their attention turned to more promising directions, and a future waste of time and means prevented."

* The Commissioner in his report for 1848, observes,—"Even if it were just to make a discrimination in favour of American citizens with regard to fees for patents, I am of opinion that the policy is injurious to the interests of the country, and therefore not expedient."

5. That it should be the duty of the Commissioner to cause each application to be entered in a book according to its priority, and that he should examine and decide upon every application in the order of its priority, without prejudice to his considering at the same time similar imventions for which applications were pending.

This regulation is necessary in order to secure his rights to each inventor according to the priority of his invention, and is analogous to the priority given to deeds according to the date of their registration.

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6. That the Commissioner should inquire into the novelty of the invention, and see that the drawings and specifications are clear and intelligible; but he is not to entertain any question as to the utility or importance of the invention, or to have any discretion as to granting the patent if these two requisites exist, novelty and a full description.

I think it would be dangerous to give the Commissioner any discretion in respect to the utility of the invention—novelty is a question of fact, utility is a speculative question which could not be satisfactorily decided upon, and which time only could test—and it is better that many patents for useless things should be taken out, than that one useful invention should be excluded from the privilege.

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7. If the Commissioner is satisfied that the invention is novel, and that a full description of it is given, he is to grant a patent which is to be in force from the date of the presenting the petition, and which may be in the following form:—

BY THE COMMISSIONER OF PATENTS.

Whereas, A.B. did on the day of present a petition to me, praying that a patent should be granted to him for [*title of invention*] and same was accompanied by a specification and model marked and numbered ( ).

Now, I do hereby by virtue of the authority vested in me grant unto the said A.B. the exclusive right to use, &c. to hold to him, his executors, administrators and assigns, for fifteen years from the said day of

The form of patent here given is short and simple, and an improvement on the prolix form now in use, which may be seen in *Hindmarch on Patents*.

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8. If the Commissioner comes to the conclusion that the invention is not novel, he is to communicate that to the petitioner, and if the petitioner acquiesces in the decision, to return him one-half the fee, £5. The petitioner shall in all cases have a right of

appeal from the decision of the Commissioner to the Judicial Committee of the Privy Council.

I think the right of appeal from the decision of the Commissioner is essential to the success of the system; and as the Privy Council now exercise the important jurisdiction of extending the time for patents, I have suggested it as the appellate tribunal.

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9. If the Commissioner decides that the drawing, specification, or models are defective, he is to give notice thereof to the petitioner, and permit him to withdraw them for the purpose of rectifying the defect if he wishes; and when the defect is removed, they may again be sent in, on payment of £5; but the application is, for the purposes of priority, to be considered as a new one.

This is suggested in order to induce inventors to present their inventions in a complete form, and capable of immediate practical application. This seems to be a proper place for explaining why I have suggested no provision for allowing any time to specify after the grant of the patent. The frauds which I have shewn that system gives rise to, and the dangers to which it exposes honest inventors, furnish, I think, a sufficient reason for giving no such latitude. It is admitted on all hands that in order to guard against fraud, in every case a substantial description of the invention should be given; if this be so, and if the invention is complete, there can be no objection to giving a complete specification in the first instance, and the withholding it is both useless and dangerous; but if a man has only an idea of an invention, if he has not reduced it into form and shape, but thinks he will be able hereafter to do so, I think he is not as yet entitled to be called an inventor, and should not receive a patent. The effect of the present system is, that persons rush in with designs crude and half-formed, and which often turn out abortive, because they know that any other person may do the same, and they fear they may be anticipated; but if it be promulgated that no patent will be granted unless the invention is a in complete state, then this race would not take place, every man would wait till he had matured his plans, and all would be placed on an equality. I by no means say that an inventor is not to get a patent unless his invention is brought to perfection, only that it should be available, and be presented in a defined and clear form; and if it does not fulfil the requisite of being practically available this should be one of the grounds for cancelling it. Whenever the patentee improves his invention he should be allowed to register his improvement, pursuing the same course as when he obtained his patent. Much has been urged as to the necessity of giving protection to an inventor while he is making experiments for the purpose of testing and perfecting his invention, and the dangers arising from the disclosure of designs by workmen and servants, have been used as arguments in support of

allowing time to specify, and protecting in the mean time. The reason, however, that an inventor is now exposed to so much danger from these causes is, that patents can be obtained on imperfect descriptions, and therefore any person getting a hint of the plans of the inventor may now anticipate him in obtaining a patent. This, however, would be impossible under the system which I suggest, as the man who originated and was completing his invention, would in all probability bring it to perfection much sooner than a person who got a casual hint of the design. The breaches of confidence complained of are matters which legislation cannot reach or prevent.

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10. As soon as the patent is granted, notice shall be given by advertisement that it has been granted; the specification and drawing shall be printed, as parliamentary papers now are, and sold at a moderate rate, and the models shall be open to inspection in the museum attached to the office.

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11. For the period of three months from the grant of the patent, any person may apply to the Commissioner of Patents for a summons, calling on the patentee to shew cause why the patent should not be repealed for any want of novelty, or for any defect or incompleteness in the specification, fraud or misrepresentation, prior use, &c. and he shall obtain such summons on lodging the sum of £10 to meet the expenses of such summons; and the proceeding by Scire Facias shall be abolished.

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12. The Commissioner shall appoint a time to hear such summons, and shall have power to refuse or grant the application, or direct the specification to be amended, and shall have power to order either party to pay the costs. This decision to be subject to appeal as before.

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13. If any such application be made after the period of three months, it shall be only granted on lodgment of £50.

The last four regulations are, I conceive, advisable, in order that if the patent has been unduly obtained, it may as soon as possible be cancelled; and an easy mode of obtaining the cancellation is given in lieu of the expensive proceeding by Scire Facias.

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14. That in any proceeding in courts of law or equity by the patentee, the patent shall be conclusive evidence that the invention is a novel one, and that the patent was duly obtained, and that the only question to be tried in an action for infringement, shall be the fact of the infringement, and the amount of damages; but that any party who is sued for such infringement, or against whom

an injunction is sought, shall have the power of staying the proceedings until the result of an application to cancel the patent shall be known.

I think that the patentee is entitled to this privilege, in consequence of the examination which has been made into his application, and the public cannot complain of it, as they have a cheap and easy mode of cancelling the patent, if they are entitled to that relief. This would restore the action for an infringement to its proper use and functions; and it is only an application of the ordinary principle of law, which is adopted in all other cases, that "possession is sufficient against a wrong-doer,"—here a party is in possession of a grant from the Crown of the exclusive use of a certain invention, it should be presumed that the grant is rightful, unless it be directly impeached; and it ought not to be incidentally called into question, no more than the title to land, or to a chattel could, if any action were brought for a trespass or injury to it by the person in possession.

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15. That it shall be lawful for a patentee to sue in the County Courts in England or Civil Bill Courts in Ireland, if he seeks only the amount of damages to which their jurisdiction respectively extend.

Unless the suggestion No. 14 be adopted, it would be absurd to give any jurisdiction to the inferior courts, or send to them questions to be tried involving scientific matters. The Civil Bill Courts here would be entirely unsuited for trying any question except that of damages, and there is no provision in those courts for the payment of the expenses of witnesses, who should be called, if it were open to the defendant to question the validity of the patent.

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16. That no error in a specification shall be deemed to vitiate it, unless it be fraudulent and calculated to mislead.

This seems only just, and the determination of it may be fairly left to the Commissioner, with the same right of appeal as in other cases.

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17. That the patent should be granted for 15 years. That the sums to be charged for a patent should be paid as follows:—£10 on the application, £10 before the end of three years, £20 before the end of seven years, and £30 before the end of twelve years from the commencement of the patent; that upon the non-payment of any of these sums the patent should be at an end; that at the expiration of the 15 years an application for an extension may be made to the Commissioner, who is to be guided by the same principles as the Privy Council now act upon, and to give an extension for

such further term not exceeding five years as he shall think fit, the charge to be fixed by him, but not to exceed £50, with an appeal to the Privy Council.

This involves the principle of periodical payments, which is most valuable as testing the utility of inventions and extinguishing dormant and unused patents. The periods and sums are of course open to much consideration; I have suggested what I think the reasonable amounts, but any change in the details will not affect the principle of payment, which will I think be found to be an improvement on the American system.*

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18. That the funds of the Patent Office should be applied in the first instance towards printing and publishing the specifications, and preparing an analytical index of existing specifications under proper heads, with indexes for reference.

Unless the specifications be thus published and made accessible to the public, it will be impossible for inventors to ascertain the novelty of their inventions, or for the Commissioner to decide upon them. The want of such an index is loudly complained of.

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19. That all patents now in force should within one year be brought in and registered in the Patent office, for which a fee of £5 should be charged; and in the event of any patent not being registered within that time, it should be deemed void.

This is necessary in order to bring all the patents into the new office, and put an end to the useless ones which the proprietors will not think worth registering.

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* As I have frequently referred to the law of the United States as to to patents, it is right to mention that I am indebted for the information respecting its working, to the annual report presented by the Commissioner of Patents to Congress and printed. These reports are prepared with great care and ability, and the facts therein stated convey a very favorable idea of the working of the system.

It appears that during the four years, 1841-2-3-4, the number of applications for patents in the United States was 3,472, and the number of patents issued was 2,073. In the next four years ending 1848, the number of applications was 5,667, and the number of patents issued was 2,362. In consequence of the staff being too small, arrears of applications had accumulated in 1848; but all are now cleared off, and at the time of making the last report in 1849, only nine applications were undisposed of. Thus it appears that more than half of the applications for patents are refused on the ground of want of novelty. An appeal is given from the decision of the Commissioner to the Chief Justice of Columbia, but very few appeals occur, and the fact that such a number of applications are refused, and the refusal acquiesced in, speaks strongly in favour of the system, and demonstrates the value and necessity of the previous inquiry.

20. That the funds of the Patent Office, after paying office expenses and printing, should be applied towards the promotion of arts and manufactures by offering prizes or otherwise.

The money levied from inventors should be applied to no other purpose except the promotion of inventions.

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21. That Patents should be considered as personal property, and have its incidents, and should be capable of being legally assigned, either absolutely or for any time or place agreed upon.

This is necessary in order to put an end to many questions which now arise as to the property in Patents, and as to the number of persons who may take an interest in them.

Such is an outline of the reforms, which, after the best consideration I can give the subject, I venture to suggest. I have of course given but an outline, for to enter into minute details would be needless, and would make this paper exceed due limits. The distinguishing features, however, are:—

The reduction of the cost to a sum sufficient to defray the expenses of the office, with a mode of payment calculated to test the utility and success of the inventions.

A previous inquiry into the novelty of each invention before it is patented.

Affording to the public a cheap and expeditious mode of cancelling improper patents.

Affording to the patentee security in the enjoyment of his patent, by making it conclusive of his right, except before the tribunal which has power to grant and cancel it.

I may, in conclusion, observe that the British empire has hitherto taken the lead in the introduction of new and improved modes of manufacturing articles of general consumption, and to that circumstance much of our commercial prosperity may be attributed. That so many inventions should have taken place, and that such progress in the useful arts should have been made, notwithstanding the difficulties and obstacles placed in the way of inventors by our law, speaks highly for the skill and genius of our people. If, however, we are to preserve that preeminence, it is evident that these obstacles must be removed, and genius at home must be placed under circumstances as favorable as it is in other countries. The restrictions which now clog and fetter it, and which had their origin in feudal times, and are based on principles no longer applicable to the state of society in which we live, must be abolished, and a better system must be adopted. This reform I am persuaded ought to be a thorough one; we ought not to retain

parts of the old system and engraft the new upon it, but at once establish a code of laws upon this subject which will not require continual alteration and modification, but will be once for all made as complete as wisdom and experience can devise.

I am, gentlemen,

Your obedient servant,

JAMES A. LAWSON.

To the Council of the Society for Promoting Scientific Inquiries into Social Questions.

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